

STATE OF MICHIGAN
COURT OF APPEALS

PEOPLE OF THE STATE OF MICHIGAN,

Plaintiff-Appellee,

v

PAUL ANDREW ROBB,

Defendant-Appellant.

UNPUBLISHED

September 25, 2007

No. 270834

Huron Circuit Court

LC No. 05-004471-FH

Before: Bandstra, P.J., and Talbot and Fort Hood, JJ.

PER CURIAM.

Defendant appeals as of right from a conviction of unarmed robbery, MCL 750.530, for which he was sentenced as an habitual offender, second offense, MCL 769.10, to 5 to 22½ years in prison. We affirm. This appeal is being decided without oral argument pursuant to MCR 7.214(E).

The victim, Frank Janik, testified that when he got home from the bar, he noticed two men crouched beside his garage. They suddenly attacked him and hit and kicked him. After they left, Janik discovered that his wallet and some money were gone. Eric Adams testified that he and defendant followed Janik home from a bar with the intent to rob him, attacked him as he came out of his garage, and stole \$120. Defendant testified that he drove Adams to Janik's home to consummate a drug deal. Once there, Adams got into an argument with Janik, struck him, and stole his money. Defendant said he was not aware that Adams intended to rob Janik and was not involved in the attack.

Defendant's sole claim on appeal is that the trial court erred in scoring Offense Variable (OV) 3 at 25 points rather than ten points.

"A sentencing court has discretion in determining the number of points to be scored, provided that evidence of record adequately supports a particular score." *People v Hornsby*, 251 Mich App 462, 468; 650 NW2d 700 (2002). A scoring decision "for which there is any evidence in support will be upheld." *People v Elliott*, 215 Mich App 259, 260; 544 NW2d 748 (1996). This Court reviews the scoring to determine whether the sentencing court properly exercised its discretion and whether the evidence adequately supported a particular score. *People v McLaughlin*, 258 Mich App 635, 671; 672 NW2d 860 (2003).

OV 3 is to be scored at 25 points if the victim suffered a life threatening or permanently incapacitating injury. MCL 777.33(1)(c). It is to be scored at ten points if the victim suffered bodily injury requiring medical treatment. MCL 777.33(1)(d). The court is to assess the highest number of points the record will support. MCL 777.33(1).

The emergency room physician testified that Janik had a broken finger, a dislocated joint in another finger, multiple facial fractures around the eyes and cheeks, sinuses filled with blood, and a small subdural hematoma (bleeding between the skull and the brain). The facial injuries and blood-filled sinuses presented a risk of breathing problems; those injuries and the subdural hematoma had to be monitored to make sure they were not life threatening. Janik was hospitalized for six days with the first two days in the intensive care unit.

The trial court determined that the subdural hematoma constituted a life threatening injury to this 73-year old victim. Janik required transport from the emergency room where he was initially triaged to an alternative medical facility in order to secure a consultation with a neurosurgeon because of the “bleeding in the brain.” The evidence indicates that Janik’s initial injuries were of sufficient concern to require his placement in an intensive care unit to determine and monitor the extent and seriousness of the sustained injuries. The need for Janik to consult with a neurosurgeon and receive close monitoring of his injuries for the initial 48-hour period following the attack comprised sufficient evidence to support a score of twenty-five points on OV 3. Had Janik’s injuries not been initially determined to be life threatening such precautions would not have been deemed medically necessary. As a result, Janik’s injuries are more readily construed as life threatening rather than merely an injury, which required only medical treatment under the instruction of OV 3 for the assignment of ten points. Because there is evidence to support the trial court’s scoring of OV 3, we uphold the scoring. We find that defendant was sentenced within the recommended range of the sentencing guidelines and that he has not established a scoring error or proven that this sentence was based on inaccurate information. Therefore, defendant’s sentence must be upheld. *People v Leversee*, 243 Mich App 337, 348; 622 NW2d 325 (2000).

Affirmed.

/s/ Richard A. Bandstra

/s/ Michael J. Talbot

/s/ Karen M. Fort Hood